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S.C.

CERTIFICATE.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 174.

CAMDEN AND SUBURBAN RAILWAY COMPANY, PLAINTIFF IN ERROR,

vs.

DAVID S. STETSON.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

FILED DECEMBER 22, 1899.

(17,234.)

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JUNE 17, 1899.

1 In the United States Circuit Court of Appeals for the Third Circuit.

CAMDEN AND SUBURBAN RAILWAY COMPANY, Plaintiff in Error,
vs.
DAVID S. STETSON, Defendant in Error.

Error to the circuit court of the United States for the district of New Jersey.

Coram Acheson, Dallas, and Butler, JJ.

This cause is in this court upon a writ of error to the circuit court of the United States for the district of New Jersey.

The suit was brought in the court below by David S. Stetson, a citizen of the State of Pennsylvania, against The Camden and Surburban Railway Company, a corporation of the State of New Jersey, to recover damages for an alleged injury to the person of the plaintiff caused by the negligence of the defendant while the plaintiff was a passenger on one of the defendant's cars.

The alleged negligence and injury occurred on the thirteenth day of July, 1896, in the city of Camden, in the State of New Jersey.

2 At that time the plaintiff was a citizen of the State of New Jersey.

On the twelfth day of May, 1896, the legislature of the State of New Jersey passed and the governor approved the following act (Laws of New Jersey of 1896, page 344):

CHAPTER 202.

A supplement to an act entitled "An act concerning evidence" (revision), approved March twenty-seventh, one thousand eight hundred and seventy-four.

Be it enacted by the Senate and General Assembly of the State of New Jersey:

1. On or before the trial of any action brought to recover damages for injury to the person, the court before whom such action is pending may, from time to time on application of any party therein, order and direct an examination of the person injured as to the injury complained of by a competent physician or physicians, surgeon or surgeons, in order to qualify the person or persons making such examination, to testify in the said cause as to the nature, extent, and probable duration of the injury complained of; and the court may in such order direct and determine the time and place of such examination; provided, this act shall not be construed to prevent any other person or physician from being called and examined as a witness as heretofore.

Approved May 12, 1896.

This cause being called for trial in the court below on the 31st day of March, 1898, and a jury having been empaneled, before the

case was opened to the jury the following proceeding took place upon the defendant's motion for the surgival examination of the plaintiff under the New Jersey statute, *supra:*

3 "Mr. ARMSTRONG (defendant's counsel): I gave notice to the counsel for plaintiff of a motion for an order that the plaintiff submit himself to an examination by competent surgeons. This notice was given under the statute which authorizes the court, at or before the trial, to make such an order. I do not know that it was necessary to give the notice, but it was the fair thing to do, and so I gave the notice. I have the physicians here and make the motion now.

The COURT: Has the plaintiff his physician in court?

Mr. CARROW (plaintiff's counsel): Yes, sir.

The COURT: Do you assent to the order?

Mr. CARROW: No, sir; I do not assent to it.

The COURT: Consent?

Mr. CARROW: No, sir; I do not consent.

The COURT: If the plaintiff is unwilling to submit himself to an examination, I shall not compel him to do so. I do not think the court has any right because a man sues for damages to subject him to an examination by physicians against his will. He ought to be secure in his person, and I will not make the order. If counsel will permit it to be done I think it is a proper thing to do, but against the plaintiff's consent I will not make any order.

Mr. ARMSTRONG: I may file the notice?

The COURT: Yes; you may file the notice.

Mr. ARMSTRONG: And if I can have an exception I would want one. I do not know that I can. I would make the same motion in the other case when it is called for trial. I ask an exception.

4 The COURT: You can have one if you are entitled to it.

Thereupon the defendant, by its counsel, prays a bill of exceptions, which is allowed and sealed accordingly.

ANDREW KIRKPATRICK, *Judge.* [L. S.]"

There was a verdict and judgment in favor of the plaintiff and against the defendant below in the sum of $3,500.

The first assignment of error is as follows:

"First. That on or before the trial of said cause the court refused and denied the application of the defendant to order and direct an examination of the plaintiff as to the injury complained of by him in his declaration by competent physicians and surgeons in order to qualify such physicians and surgeons to testify in such case as to the nature, extent, and probable duration of the injury complained of, on the ground that it was beyond the power of the court to grant such application or make such order."

Such being the facts, and this court desiring the instruction of the honorable the Supreme Court of the United States for the proper decision by this court of the subjoined questions or propositions of law thereon arising, it is now ordered that the following questions or propositions of law, together with the foregoing statement of facts upon which they arise, be, and the same are hereby, certified to the

Supreme Court agreeably to the provisions of the sixth section of the act entitled "An act to establish circuit courts of appeals,
5 and to define and regulate in certain cases the jurisdiction of the courts of the United States, and for other purposes," approved March 3d, 1891, to wit:

1. Is the above-recited statute of the State of New Jersey, the act of May 12th, 1896, applicable to an action to recover damages for injury to the person brought and tried in the circuit court of the United States for the district of New Jersey?

2. Is said statute applicable to an action to recover damages for injury to the person brought and tried in the circuit court of the United States for the district of New Jersey, where the injury occurred in the State of New Jersey and both the plaintiff and the defendant at the time of the injury were citizens of that State?

3. Had the circuit court the legal right or power to order a surgical examination of the plaintiff?

In testimony whereof the undersigned, the judges holding the said circuit court of appeals, have hereunto set their hands and seals this thirteenth day of December, 1898.

M. W. ACHESON, *Circuit Judge.* [SEAL.]
GEO. M. DALLAS, *Cir. Judge.* [SEAL.]
WM. BUTLER. [SEAL.]

6 UNITED STATES OF AMERICA, *sct:*

I, William H. Merrick, clerk of the United States circuit court of appeals for the third circuit, do hereby certify the foregoing to be a true and faithful copy of the original certificate on questions or proposition- of law, filed December 16, A. D. 1898, in the case of Camden and Surburban Railway Company, as plaintiff in error, *vs.* David S. Stetson, as defendant in error, No. 8, September term, 1898, on file and now remaining among the records of the said court in my office.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said court, at Philadelphia, this twenty-first day of December, in the year of our Lord one thousand eight hundred and ninety-eight, and of the Independence of the United States the one hundred and twenty-third.

[Seal United States Circuit Court of Appeals, Third Circuit.]

WM. H. MERRICK,
Clerk U. S. Circuit Court of Appeals, Third Circuit.

[Endorsed:] No. 8, Sept. term, 1898. U. S. circuit court of appeals for the third circuit. Camden and Surburban Railway Company, plaintiff in error, *vs.* David S. Stetson. Certified copy of questions or propositions of law for instructions of the U. S. Supreme Court.

Endorsed on cover: File No., 17,234. U. S. C. C. of appeals, third circuit. Term No., 174. Camden and Suburban Railway Company, plaintiff in error, *vs.* David S. Stetson. Filed December 22d, 1898.